

90-897

Supreme Court, U.S.
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JOSEPH F. SPANIOLO, JR.

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

GLEN CADE t/a G & G TOWING, ET AL.,

Petitioners,

vs.

MONTGOMERY COUNTY, MARYLAND, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE
COURT OF SPECIAL APPEALS OF MARYLAND

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Does the legal tender clause of the United States Constitution prohibit local municipalities from requiring private parties to accept cash substitutes (checks and credit cards) for payment for nongovernmental services performed by the private parties for private purposes?

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Petitioners,
vs.

MONTGOMERY COUNTY, MARYLAND, ET AL.
Respondents.

**PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF SPECIAL APPEALS OF MARYLAND**

The Petitioners, Glen Cade, t/a G & G Towing, et al., respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the Court of Special Appeals of Maryland entered in this proceeding on June 27, 1990.

QUESTION PRESENTED FOR REVIEW

Does the legal tender clause of the United States Constitution prohibit local municipalities from requiring private parties to accept cash substitutes (checks and credit cards) for payment for nongovernmental services performed by the private parties for private purposes?

PARTIES TO THE PROCEEDING

The Petitioners are an unincorporated association of private trespass towing from Montgomery County, Maryland, who are suing in their individual capacities. They are: Glen Cade, t/a G & G Towing; Nick Gable t/a Performance Towing; Mike Marinari, t/a Mike's Crane Service; Bill Brown, t/a Silver Spring Towing; Marco DiFrancesco, t/a Marco's Towing; Robert Wheeler, t/a Connecticut Avenue Towing; Mark Bowie, t/a M.W. Bowie, Inc.; Richard Gable, t/a Poor Richards; Dave Demolovich, t/a Potomac Towing; Sam Laddon, t/a Road Service, Inc.

The Respondents are: Montgomery County, Maryland, a body corporate and politic and the Montgomery County Executive, Sidney J. Kramer.

OPINION BELOW

The opinion of the Court of Special Appeals of Maryland was filed on June 27, 1990, and authored by Judge Wenner. (Appx. C. *infra*)

JURISDICTION

The opinion of the Court of Special Appeals of Maryland was filed on June 27, 1990, and the mandate issued on July 27, 1990. A timely Petition for Writ of Certiorari to the Court of Appeals of Maryland was filed on July 31, 1990. The Court of Appeals of Maryland entered an order denying the Petition for Writ of Certiorari on August 30, 1990. (Appx. D. *infra*) This Petition for Writ of Certiorari was filed within ninety (90) days of the Judgment of the Court of

Appeals of Maryland. 28 U.S.C. §2101(c) (1986); Sup. Ct.R. 20. This court's jurisdiction is invoked pursuant to 20 U.S.C. §1257(a) (1986) because the validity of a state statute is drawn into question on the grounds of its being repugnant to the Constitution of the United States.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. Art. I, §10 cl.1

No state shall ... coin money; ...make anything but gold and silver coin a tender in payment of debts....

STATEMENT OF THE CASE

The Petitioners are private parties (individuals and companies) that make a living by towing illegally parked vehicles from private property pursuant to contracts entered into between the Petitioners and private property owners. Signs are posted on private property indicating that parking is prohibited and that illegally parked cars will be towed and stored at the vehicle owner's expense. Respondent, Montgomery County, Maryland, is not a party to the towing contracts nor is the towing performed at the County's request, nor is the towing performed for a governmental purpose or function. The contracts and towing are strictly private matters between the private property owner, the owner of the towed vehicle, and the towing company.

On February 16, 1988, Respondent, Montgomery County, Maryland, acting through the Montgomery County Council enacted Bill 16-87, which was signed by Respondent, Montgomery County Executive Kramer on

February 25, 1988. Bill 16-87 was to take effect on May 26, 1988, and would have had the effect of generally regulating the business of trespass towing in Montgomery County, Maryland.

Prior to its effective date, the Petitioners brought a Declaratory Judgment suit on April 22, 1988, in the Circuit Court for Montgomery County, Maryland, seeking an Interlocutory and Permanent Injunction and a Declaration declaring Bill 16-87 unconstitutional. (Appx. A. *infra*) Petitioners raised in paragraph thirteen of the initial pleading in this case their constitutional objection to the bill:

Specifically Bill 16-87 requires the Plaintiffs to accept cash and either personal checks or credit cards. Such provisions violate the Legal Tender Clause of the United States Constitution. (U.S. Constitution Art. I, §10). (Appx. A para 13, p. 5a *infra*)

An Interlocutory Injunction was entered by the Circuit Court for Montgomery County, Maryland, on May 18, 1988, restraining the Respondents, Montgomery County, Maryland, and Sidney Kramer from enforcing or implementing the Bill pending final disposition of the case. The parties filed cross motions for Summary Judgment and on June 16, 1989, the Circuit Court for Montgomery County, Maryland, entered an opinion and order holding the Bill unconstitutional in its entirety, and specifically ruling on the constitutional issue raised by Petitioners. (Appx. B. *infra*)

An appeal was taken to the Court of Special Appeals of Maryland, further asserting constitutional objections to the bill, which in a published opinion on June 27, 1990, reversed the Circuit Court for Montgomery County, Maryland, and declared that Bill 16-87 was constitutional and did not violate Art. I, §10 of the United States Constitution.

REASONS FOR GRANTING THE WRIT

This court should decide whether the Legal Tender Clause of the United States Constitution (U.S. Const. Art. I, §10, cl. 1) prohibits local government entities from requiring private parties in purely private transactions to accept cash substitutes (checks and credit cards).

Petitioners are engaged in the business of towing motor vehicles which are either trespassing or illegally parked from private property at the request of the private property owner. The owner of the vehicle so towed, pays the Petitioners for the cost of the tow. Petitioners only accept cash. The Bill passed by Respondent, Montgomery County, requires the Petitioners to accept, in addition to cash, either a credit card slip or a personal check.

Article I, §10, cl. 1 of the United States Constitution provides that “[no] State shall...make anything but gold and silver coin a tender in payment of debts...”. This provision arose from the economic chaos that ensued following the American Revolution during the period of the Articles of Confederation when the States had the power to enact tender laws, issue script, and otherwise determine and define what constituted money and currency. Responding to this state of affairs the founding fathers provided in the Constitution that the States are prohibited from coining money, emitting bills of credit, or making anything but gold and silver a tender in payment of debts. *Guillard v. Greenman*, 110 U.S. 421, 447 (1884).

Pursuant to its exclusive authority to provide for uniform national currency, Congress defined legal tender as:

United States coins and currency (including Federal Reserve Banks and National Banks) are legal tender for all debts, public charges, taxes, and dues. Foreign

gold or silver coins are not legal tender for debts. 31 U.S.C., §5103.

In other words the United States dollars and coins, that is "cash" constitute legal tender and must be accepted in payment of all debts public and private. Neither the Constitution of the United States nor the United States Code provide for cash substitutes such as checks or credit cards for payment of public or private debts.

It should be noted that the commercial transactions involved in this case are purely private matters. The Petitioners are privately owned towing companies. The cars which are towed are owned by private parties. The property owners who request the towing of the trespassing vehicles are also private property owners. The towing is *not* done for a municipal or governmental purpose. Indeed, the record below disclosed that when Montgomery County, Maryland, requires the towing of a motor vehicle it will accept *only* cash and will not accept checks or credit cards. Thus, the law sought to be enforced here is that of requiring private parties to accept cash substitutes when the governmental unit itself would not accept cash substitutes.

The situation created by this bill in Montgomery County, is not unique and two other State courts of last resort have addressed this issue. The State of Washington dealt with it in *Crane Towing, Inc. v. Gorton*, 89 Wash.2nd 161, 570 P.2nd 428 (1977); and the State of Georgia dealt with it in *Porter v. City of Atlanta*, 259 Ga. 526, 384 S.E. 2d 631 (1989).

Each of the cases seem to rely on a balancing test between the needs of the government to regulate the towing industry and the requirement of Article I, §10 of the United States Constitution.

It is axiomatic that the use of checks, credit cards, cash,

and cars is extremely widespread in American society. What is not clear from a constitutional perspective, however, is whether a governmental entity can force a private party to accept a check or credit card for a purely private transaction.

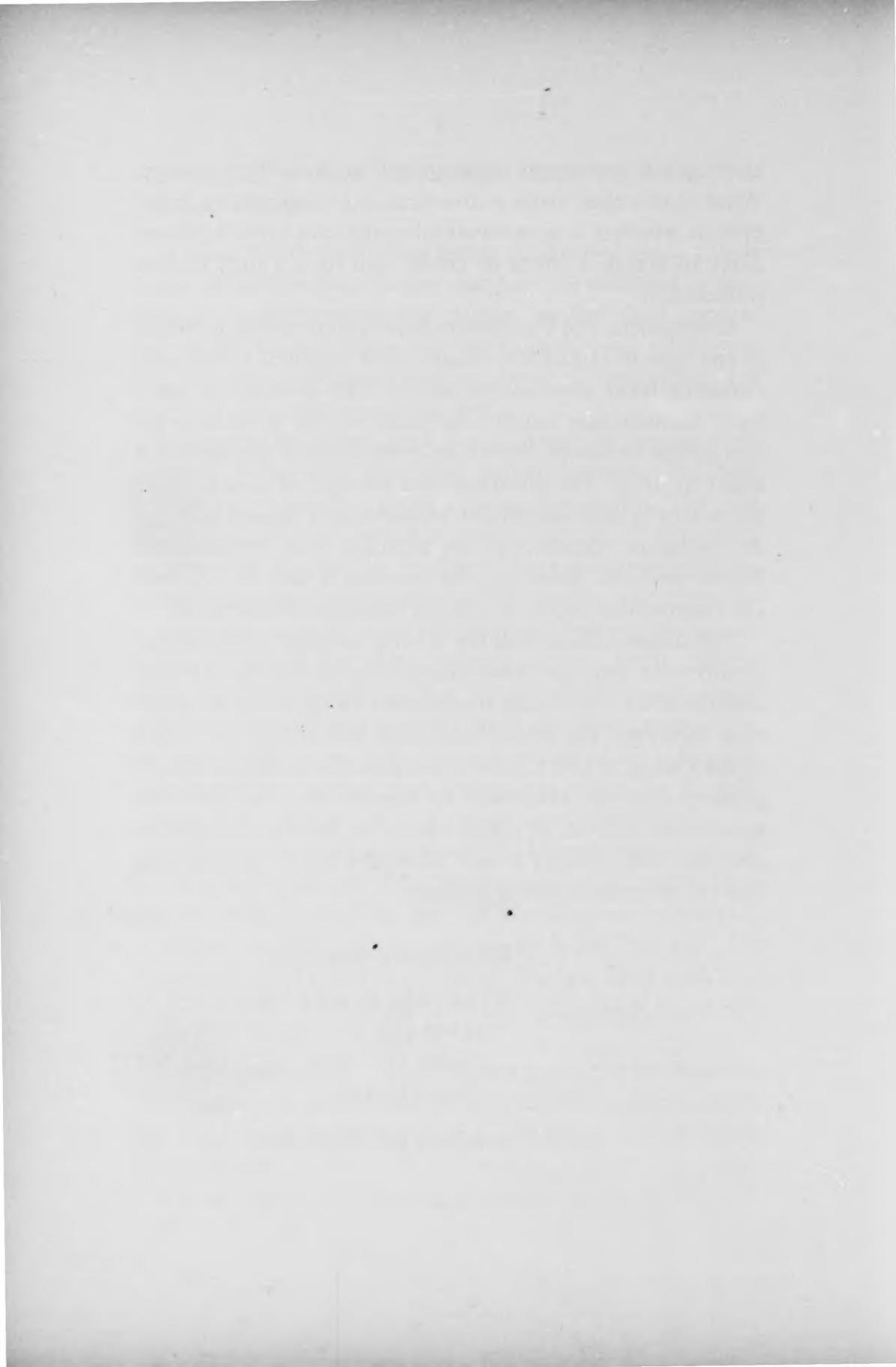
A simplistic, but Petitioners believe illustrative, example of the type of regulation sought to be imposed in this case concerns local convenience stores. The question is can a local municipality require the local 7-11 or other convenience store to accept checks or credit cards in payment of a quart of milk? The governmental entities, of course, have the power to regulate private business with respect to hours of operation, location of the business, and certain other health concerns. However, the question is can they regulate the commercial mode of private business transactions.

Petitioners submit that the towing industry is in a similar situation in that the government may license it and may impose other reasonable regulations on its mode of operation. However, the Petitioners firmly believe that Art. I, §10 of the United States Constitution does not authorize Montgomery County, Maryland to require them to take cash substitutes (checks or credit cards) as payment of a debt, and for that reason a writ should issue to review this important constitutional concern.

Respectfully submitted,

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(301) 952-0100

Attorney for Petitioners



APPENDIX A

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

GLENN CADE
t/a G & G TOWING
9501 Georgia Avenue
Silver Spring, Maryland 20910

and

NICK GABLE Civil Action No. 31777
t/a PERFORMANCE TOWING
5200 River Road
Bethesda, Maryland 20816

and

MIKE MARINARI
t/a MIKE'S CRANE SERVICE
2701 Garfield Avenue
Silver Spring, Maryland 20910

and

BILL BROWN
t/a SILVER SPRING TOWING
8913-B Brookville Road
Silver Spring, Maryland 20910

and

MARCO DIFRANCESCO
t/a MARCOS TOWING
8913-B Brookville Road
Silver Spring, Maryland 20910

and

ROBERT WHEELER
t/a CONNECTICUT AVE. TOWING
4108 Howard Avenue
Kensington, Maryland 20895

and

MARK BOWIE
t/a M W BOWIE INC.
4202 Frankfort Drive
Rockville, Maryland 20852

and

RICHARD GABLE
t/a POOR RICHARDS
10211 Westlake Drive
Bethesda, Maryland 20817

and

DAVE DEMOLOVICH
t/a POTOMAC TOWING
3504 Astoria Court
Kensington, Maryland 20895

and

SAM LADDON
t/a ROAD SERVICE INC.
11902 Indigo Road
Wheaton, Maryland 20906

Plaintiffs

vs.

MONTGOMERY COUNTY MARYLAND

A body corporate and politic

serve: Sidney J. Kramer

County Executive

Executive Office Bldg.

Rockville, Maryland 20850

and

SIDNEY J. KRAMER, County Executive

Executive Office Bldg.

Rockville, Maryland 20850

and

Also Serve:

J. Joseph Curran, Jr.

Attorney General

State of Maryland

7 North Calvert St.

Baltimore, MD 21202

Defendants

**COMPLAINT FOR INTERLOCUTORY AND
PERMANENT INJUNCTION AND
DECLARATORY JUDGMENT**

Plaintiffs, Glenn Cade, Nick Gable, Mike Marinari, Bill Brown, Marco Difrancesco, Robert Wheeler, Mark Bowie, Richard Gable, Dave Demolovich and Sam Laddon by and through their counsel Knight, Manzi, Brennan, Ostrom &

Ham, P.A., bring this complaint for Temporary and Permanent Injunction and Declaratory Judgment against Montgomery County, Maryland, and Sidney J. Kramer, County Executive of Montgomery County, Maryland Defendants for the following reasons:

INTRODUCTION

1. Plaintiffs are adult residents of Montgomery County, Maryland and are engaged in the business of towing automobiles in Montgomery County, Maryland.
2. Defendant, Montgomery County, Maryland is a body corporate and politic in the State of Maryland, and a Charter County organized pursuant to Md. Ann. Code Art. 25A, and the Montgomery County Charter.
3. Defendant, Sidney J. Kramer is the duly elected County Executive of Montgomery County, Maryland, and is charged with enforcement of the provisions of the Montgomery County Code.
4. On February 16, 1988, the Montgomery County Council passed Bill 16-87 which was then signed by Defendant County Executive Kramer on February 25, 1988. Bill 16-87 is to take effect on May 26, 1988, and upon information and belief the Plaintiffs allege that the Defendants will enforce the provisions of Bill 16-87. (A copy of Bill 16-87 as is attached hereto as Exhibit A and incorporated herein by preference.)
5. This Complaint is brought pursuant to Md. Cts. & Jud. Pro. Code Ann. §3-401 *et. seq.* regarding Declaratory Judgments.
6. This Court has jurisdiction of this matter pursuant to Md. Cts. & Jud. Pro. Code Ann. §1-501 & §4-402(c).
7. This Court has jurisdiction over the defendants pursuant to Md. Cts. & Jud. Pro. Code Ann. §6-102.

8. This Court is the proper venue for this action pursuant to Md. Cts. & Jud. Pro. Code Ann. §6-201.

COUNT I

(Declaratory Judgment)

9. The allegations of Paragraphs 1 through 8 are re-alleged as if specifically set forth herein.

10. Bill 16-87 is illegal in that it violates provisions of the United States Constitution, the Maryland Constitution and Declaration of Rights, the United States Code, and the Annotated Code of Maryland.

11. Specifically Bill 16-87 authorizes Defendant Kramer to set regulations for the maximum rates to be charged for towing by the plaintiffs. Such a provision violates the Anti-Trust Laws of the United States specifically the Sherman Anti-Trust Act (15 U.S.C. §1).

12. Specifically Bill 16-87 sets forth so-called "tow, redemption and storage" procedures to be followed by the Plaintiffs and landowners. Such provisions violate the Contract Clause of the United States Constitution. (U.S. Constitution Art. I Sec. 10).

13. Specifically Bill 16-87 requires the Plaintiffs to accept cash, and either personal checks or credit cards. Such provisions violate the Legal Tender Clause of the United States Constitution. (U.S. Constitution, Art. I Sec. 10).

14. The setting of maximum rates will cause substantial, immediate and irreparable harm to the plaintiffs by directly impacting on their income.

15. The impairment of the plaintiff's contracts will cause substantial, immediate and irreparable harm to the plaintiffs by directly impacting on their business relations with property owners.

16. By requiring the plaintiffs to accept credit cards or personal checks there will be substantial, immediate and irreparable harm to the plaintiff's income.

17. Plaintiffs will be directly damaged in their business and property if Bill 16-87 is enforced, and such enforcement will result in the infringement of their Constitutional and Statutory Rights.

WHEREFORE, the Plaintiffs pray that this Court will issue a judgment declaring Montgomery County bill 16-87 to be unconstitutional and illegal, and granting such other and further relief as the nature of this cause may require.

COUNT II

(Temporary and Permanent Injunction)

18. The allegations of Paragraphs 1 through 17 are re-alleged as if specifically set forth herein.

19. Enforcement of Bill 16-87 by the Defendants would cause Plaintiffs to suffer substantial, immediate and irreparable harm by making it difficult or impossible to continue their business operations.

WHEREFORE, the Plaintiffs, pray that this Court will:

A. Issue a temporary injunction enjoining the Defendants from enforcing the provisions of Bill 16-87 pending final resolution of this case;

B. Issue a permanent injunction enjoining the Defendants from enforcing the provisions of Bill 16-87 permanently; and

C. Granting such other and further relief as the nature of this cause may require.

Respectfully submitted,

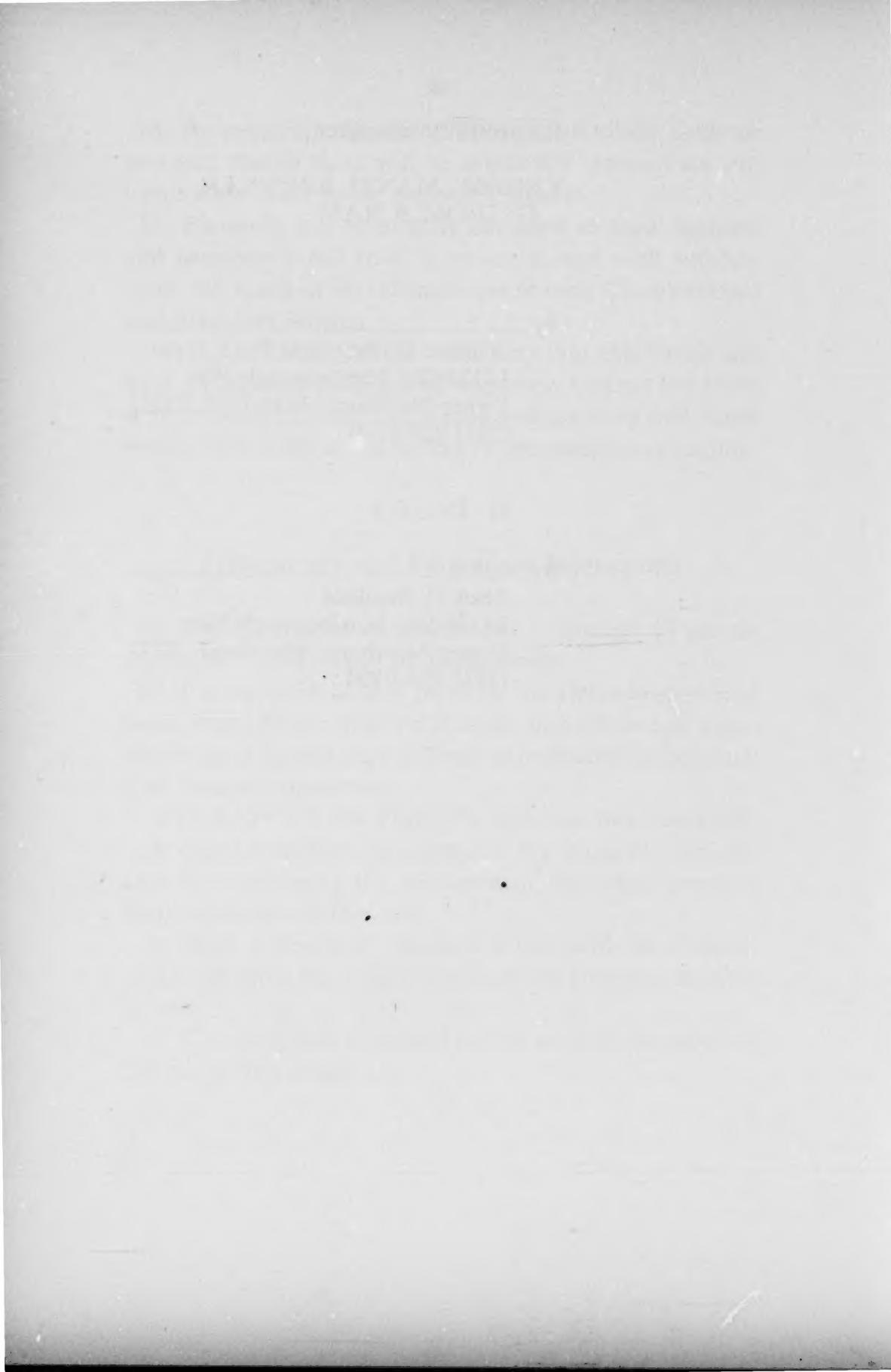
**KNIGHT, MANZI, BRENNAN,
OSTROM & HAM**

By: _____

William C. Brennan, Jr.
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By: _____

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APPENDIX B

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

GLENN CADE
t/a G & G TOWING

and

NICK GABLE
t/a PERFORMANCE TOWING

and

MIKE MARINARI
t/a MIKE'S CRANE SERVICE

and

BILL BROWN
t/a SILVER SPRING TOWING

Civil No. 31777

and

MARIO DIFRANCESCO
t/a MARCO'S TOWING

and

ROBERT WHEELER
t/a CONNECTICUT AVE TOWING

and

MARK BOWIE
t/a M W BOWIE INC.

and

**RICHARD GABLE
t/a POOR RICHARDS**

and

**DAVE DEMOLOVICH
t/a POTOMAC TOWING**

and

**SAM LADDON
t/a ROAD SERVICE INC.**

Plaintiffs

v.

**MONTGOMERY COUNTY, MARYLAND
A body corporate and politic**

and

**SIDNEY J. KRAMER,
County Executive**

Defendants

OPINION AND ORDER

Plaintiffs, a group of tow truck operators who engage in the towing of motor vehicles from private property, have brought a Declaratory Judgment action against Montgomery County, Maryland, challenging Bill No. 16-87 and

requesting that it be declared unconstitutional. Plaintiffs claim the Bill is unconstitutional for three different reasons:

- I. That the bill unconstitutionally impairs contracts.
- II. That the rate-setting process violations provisions of the Federal Anti-Trust statutes.
- III. That the Bill violates the Legal Tender Clause of the United States Constitution.

Plaintiffs and Defendants have filed cross-motions for summary judgment. The Court is of the opinion that the Bill as written exceeds the police powers of the County and is therefore unconstitutional.

The Court will deal first with the second and third contentions.

At the time of the hearing, Plaintiffs conceded, as they must, that the towing controls established by the bill lacked concerted action required for violation of the Sherman Anti-Trust Act. Accordingly, they have withdrawn that thrust of their attack on the Bill.

The attack by Plaintiffs on the Bill as violating Art. I Sec. 10 of the United States Constitution must also fail because it does not create a new legal tender for payment of a debt. Plaintiffs' argument might have some substance if the bill required the tow truck operators to accept beads or sea-shells in payment rather than credit cards, checks or money. Since the checks or credit cards represent legal tender, they represent an alternative manner of payment of "cash" rather than a substitute legal tender. Accordingly, the Bill does not violate the Legal Tender provision of the United States Constitution.

The Montgomery County Government has broad discretion in the exercise of its governmental police powers. Key-

stone Bituminous Coal Association v. DeBenedictis, 480 U.S. 470, 94 L.Ed. 2d 472, 107 S.Ct. 1232 (1987). When the legislation serves a legitimate public interest, the courts should not interfere with that governmental purpose.

The County has clearly established the need to regulate the towing industry because of the numerous abuses by the industry in excessive rates for cars towed from private property and the difficulty of the owners of the automobiles redeeming the towed vehicles. Bill 16-87, however, exceeds legitimate police power in the regulation of the towing companies.

Chapter 30C(c) states:

"Purpose. This chapter does not authorize the towing or holding of any vehicle. To the extent that legal authority to tow or hold a vehicle without the consent of its owner exists, that authority must be derived from other statutes or the common law. This chapter restricts the exercise of any such legal authority."

The entire Bill, however, is predicated on the false assumption that some right of retention by the trespass towing companies exists for the retention of the vehicles that they have towed. No such authority exists.

In the case of *T. R. Ltd. v. Lee*, 55 Md. App. 629, the court recognized that no common law possessory lien existed and none was created under Sec. 26-160 of the Prince George's County Code. The Court of Special Appeals stated, on p. 634:

"Possessory liens are fundamentally consensual in nature and arise from some agreement, either express or implied, between the owner of goods and his bailee who renders some service with respect to those goods."

House Bill No. 377, which repeals and reenacts Transporta-

tion Art. Sec. 26-301(b) of the Annotated Code of Maryland, authorizes any political subdivision to regulate the parking of vehicles, provide for the impounding of vehicles parked in violation of the ordinance or regulations, and, more importantly, regulate the towing of vehicles from publicly owned and privately owned parking lots. Montgomery County's Bill 16-87 does not authorize the impounding of the vehicles but does regulate the removal of trespassing vehicles on private property.

The right of the owner of private property to use self-help to abate a nuisance or trespass upon that property was discussed in *Melnick v. C.S.X. Corp.*, 68 Md. App. 107 (1986). Bill 16-87 infringes upon the right of private property owners to use self-help in the removal of vehicles trespassing on their property.

Although the bill excludes single-family residences, any other property owner must post a sign notifying the public of parking restrictions at least twenty-four hours before towing or ordering the towing of unauthorized vehicles. It further requires the posting of a sufficient number of signs to be clearly visible from each parking area and each vehicle entrance to the property at all times. It further requires the signs to summarize parking restrictions indicating that the vehicles violating the restrictions may be towed at the owner's expense and listing of the telephone number of each towing service hired to tow an authorized vehicle.

Any person who tows a motor vehicle from private property for compensation without the consent of the vehicle owner meets the definition of a towing service. Consequently, any owner of private property, whether residential or commercial other than single-family residences, may not abate a trespassing vehicle unless it complies with the stringent restrictions of Bill 16-87. Although there may be certain privately owned commercial establishments that

have contributed to the abuse of trespass towing of the unwary public who might feel they have an invitation to park on that lot, it does not justify such a sweeping exercise of the police powers to prohibit the removal of trespassing vehicles on all private property when the property owner pays another for that removal.

Section 30C-6 prohibits the towing of a handicapped vehicle from private property. The effect of this section is to give a license to all handicapped vehicles to park on private property, which is an invalid infringement on the right of the private property owner.

Section 30C-7 is a provision for incomplete tows that requires the tow truck operator to release the trespassing vehicle if the owner returns before it is towed from the private property provided the owner pays a release fee. The owner of the property may have a cause of action to recover the cost of the towing from the vehicle owner, but this section creates a requirement of payment that has not hitherto existed. Since no possessory lien exists, there was no statutory or common law requirement that the owner has to pay the tow truck operator and, indeed, the owner could lawfully demand the release of his vehicle from the tow truck.

As previously indicated, Montgomery County was obviously under the erroneous assumption that towing services had either a possessory lien or a right to retain the trespassing vehicle until the owner paid for the cost of the towing and storage. Section 30C-8 sets forth numerous requirements for the acceptance of payment by the trespass towing service including the acceptance of collateral, when in fact the trespassing vehicle owner isn't required to pay anything for the return of his vehicle and is entitled to have it returned upon demand.

30C-8(c) sec.(5)(6) provide for liquidated damages in the

event of the withholding of payment or stop payment by the vehicle owner on credit card transactions or checks made to the towing company. This section provides a remedy to the towing service for which there is no legal right. Prior to the adoption of Bill 16-87, an owner could demand the release of his towed vehicle and if the release was refused, give a personal check to cover whatever charges were made by the towing service, then subsequently stop payment without subjecting himself to any legal recourse since there was no consideration for the giving of the check. Since the Bill does not create a possessory lien, there is no reason for the County to afford to the trespass towing services the right to recover damages for something that they are not entitled to demand.

Although the Court finds that there is a legitimate public purpose in the regulation of the towing industry, at least to the extent of the trespass towing service, the provisions of Bill 16-87 with respect to the owners of private property and the requirement of certain payments and related penalty provisions are so inextricably intertwined that they are not severable from the balance of the Bill. *State v. Burning Tree Club, Inc.*, 315 Md. 254 (1989). Although this Court finds that Bill 16-87 is unconstitutional as adopted, any claimed victory by the plaintiffs may be hollow and short-lived. In all probability, Montgomery County will adopt a new bill pursuant to the provisions of House Bill No. 377. In the event that they do, it is hopeful that they will consider whether or not it is necessary to regulate parking of unauthorized vehicles on private residential or commercial property, what if any regulations or restrictions should apply to the owners of the private property, whether or not towing services should have the right of possession until payment is made, and the reenactment of appropriate regulation of the towing services.

For the aforesgoing reasons, it is, this 16th day of June, 1989,

ORDERED, that summary judgment be granted in favor of the Plaintiffs against the Defendants on the Declaratory Judgment and Bill No. 16-87 is hereby declared unconstitutional; and it is further

ORDERED, that Montgomery County, Maryland, be enjoined from enforcing Bill No. 16-87.

WILLIAM M. CAVE, JUDGE

APPENDIX C
R E P O R T E D
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND
No. 1161
September Term, 1989

**GLENN CADE, t/a G & G TOWING,
et al.**

V.

**MONTGOMERY COUNTY, MARYLAND
et al.**

Moylan,
Garrity,
Wenner,
J.J.

Opinion by Wenner, J.

Filed: June 27, 1990

Upon this appeal and cross-appeal from the Circuit Court for Montgomery County, we are asked to consider the validity of a comprehensive local ordinance regulating the towing of motor vehicles from private property without the consent of the vehicles' owners. We shall reverse the judgment of the circuit court which declared the ordinance unconstitutional in its entirety. In so doing we shall address, although not necessarily in the order presented, the following arguments:

- I. A local ordinance which requires a towing service to accept as payment for towing and storage fees personal checks or credit cards in lieu of cash violates the prohibition against States making anything but gold and silver coins tender in payment of debts;
- II. A possessory lien is created in favor of the towing service until the vehicle owner pays the towing and storage fees;
- III. A vehicle owner who parks without permission on private property that is properly posted with signs warning that trespassing vehicles will be towed, and whose vehicle is towed at the direction of the property owner, is liable for the towing and storage fees;
- IV. Towing services do not have standing to assert that the rights of private property owners are improperly infringed by the ordinance;
- V. The ordinance is a proper exercise of the police power.¹

¹Issues I and II are presented by appellants; issues III, IV and V are presented on cross-appeal by appellee.

Appellants, G & G Towing, et al., are a number of towing companies. They sought a declaration that the ordinance, Bill No. 160-87, was unconstitutional. In the meantime, appellants were successful in enjoining the appellee, Montgomery County, Maryland, from enforcing the ordinance until resolution of the merits of their complaint.² The matter was heard by the circuit court upon cross motions for summary judgment. After a hearing, the circuit court declared that the ordinance was unconstitutional as exceeding the County's police power.³ We disagree.

Montgomery County has adopted a home rule charter under Article XI-A of the Maryland Constitution. Consequently, Article 25A, Section 5(S) of the Annotated Code of Maryland confers upon Montgomery County the authority to "pass all ordinances, resolutions, or bylaws not inconsistent with the provisions of this article or the laws of the State, as may be proper in executing and enforcing any of the powers enumerated in this section or elsewhere in this article, as well as such ordinances as may be deemed expedient in maintaining the peace, good government, health and welfare of the county." *See also Montgomery Citizens League v. Greenhalgh*, 253 Md. 151, 159-160, 252 A.2d 242 (1969). *See also* Mont. Co. Code § 2-12 (1984) (conferring upon the Montgomery County Council "full power and

²The injunction was later modified to permit appellee to enforce the provisions relating to posting signs, requiring the towing companies to notify the local police department of trespassing tows, and precluding the towing of vehicles with valid handicapped identification. 30C-4(b), 30C-5 and 30C-6.

³The circuit court's declaration was based upon grounds different from those advanced by the appellants. Appellants contended below that the ordinance violated Article I, § 10 of the United States Constitution by impairing the obligation of contracts and establishing a form of legal tender other than gold and silver coin. Appellants' claim that the ordinance violated anti-trust laws was apparently abandoned at the hearing.

authority to enact ordinances for the county as it may deem necessary for the peace, good government, safety or welfare of the county"). The Court of Appeals has held that this grant of power to legislate for the general welfare of the county is to be afforded a broad reading. *Id.* at 161. The Court has also said that it is enough that a legislative act tends to correct some local evil or promote some local interest, and that the act is reasonably and substantially related to its goal or purpose. *Steuart Petroleum Co. v. Board of County Commissioners*, 276 Md. 435, 446-447, 347 A.2d 854 (1975). For purposes of illumination, we summarize the legislation and its objective.

The catalyst behind Montgomery County Council Bill No. 16-87, to be codified in the Montgomery County Code as Chapter 30C, Motor Vehicle Towing From Private Property, was citizen complaints of "excessive rates, little or no notice of which areas are off limits to parking, and difficulty in redeeming towed vehicles." See Legislative Request Report, Bill No. 16-87. The purpose of the Bill, then, was to "clarify the respective rights of landowners, towing services, and motorists." *Id.*

The scope of Bill No. 16-87 is limited to the towing of motor vehicles from private property without the consent of the owners of the vehicles. 30C-1(b). Generally, vehicles with valid handicapped registration plates or valid disabled person's parking permit may not be towed from private property without the consent of the vehicle's owner.⁴ 30C-6.

The rates which a towing company may charge are

⁴A vehicle with a valid handicap registration plate or a valid disabled person's parking permit conspicuously displayed may be towed without the owner's consent, however, if the tow is expressly authorized by a police officer at the request of a property owner, or the vehicle is blocking a clearly marked fire lane or access to another vehicle, the property or a building.

limited to those maximum rates set by the county executive. 30C-2(a). Every trespass towing company must file with the office of consumer affairs a schedule of its towing and storage rates, and is precluded from charging fees that exceed that schedule. 30C-3(c) and (d). Each trespass towing company must enter into a written agreement with every private property owner that authorizes a towing company to tow trespassing vehicles. 30C-3(f).

Bill No. 16-87 imposes certain requirements on owners of private property. Prior to having a motor vehicle towed without the consent of the vehicle's owner, the property owner must post a sufficient number of signs notifying the public of the parking restrictions. 30C-4(b)(1). Signs must be posted 24 hours prior to towing a trespassing vehicle. *Id.* It is sufficient if at least one sign is clearly visible from each parking area and each vehicle entrance to the property. 30C-4(b)(2). In the alternative, private parking lots having more than 100 spaces may post in a conspicuous place, readable from all affected spaces, at least one sign for every 75 spaces. *Id.* Each sign must indicate the area and time within which the restrictions will be enforced and give notice that any vehicles violating the restrictions will be towed at the owner's expense. 30C-4(b)(3). Signs must include the telephone numbers of each towing company hired to tow and, in the alternative, a telephone number at which the towing company may be reached at all hours. *Id.* Signs must be clearly legible and unobstructed. *Id.* Alternatively, owners of residential property, such as condominiums, may have a trespassing vehicle towed within not less than 48 hours after having attached a written notice to the vehicle in a conspicuous place notifying the owner of the violation. *Id.* Public notice provisions are inapplicable to towing from the yard or driveway of single family dwellings. 30C-1(b)(3)(B). Private property owners or their agent must expressly author-

ize the tow. 30C-4(c).

Bill No. 16-87 also prescribes towing and redemption procedures. The towing company must tow each trespassing vehicle to the nearest storage site available to the company, but not more than 12 miles from the origin of the tow. 30C-8(a)(1). The towing company must keep the towed vehicle and its contents secure at all times. 30C-8(a)(4). The towing company must notify the appropriate county or municipal police department of each trespass tow, 30C-5(a); the police must be contacted again if a vehicle remains in the company's possession for more than 72 hours. 30C-5(d). The towing company is required to remain open at least 2 hours after completion of the last tow. 30C-8(b).

The towing company is required to accept in lieu of cash payment either a major credit card or a personal check. 30C-8(c)(2)(A).⁵ In the event a vehicle owner later withholds payment for a credit card transaction or stops payment on a check, the vehicle owner is liable to the towing company for twice the amount validly charged. 30C-8(c)(5) and (6). If, prior to a vehicle's removal from private property but after the vehicle has been attached to the tow truck, the vehicle owner returns to the tow site, the towing company must release the vehicle to the owner upon payment by the owner of a release fee. 30C-7(a). Such release fee cannot be greater than one-half the fixed rate for towing the vehicle to the nearest storage site. *Id.* With this background firmly in mind, we now turn to the issues at hand.

Discussion

At the outset, we observe that an ordinance, like a statute, is presumed to be valid. *R.S. Construction Co. v. City of*

⁵The towing company is required to accept the two most widely used major credit cards as determined by the Office of Consumer Affairs.

Baltimore, 269 Md. 704, 706, 309 A.2d 629 (1973). A legislative enactment is within the permissible bounds of the police power if it is reasonably and substantially related to the public health, morals, safety and welfare of the people. *Steuart, supra*, 276 Md. at 446. Beyond that, of course, the act must not infringe upon any constitutional guarantees. *Maryland Board of Pharmacy v. Sav-A-Lot.*, 270 Md. 103, 106-107, 311 A.2d 242 (1973). In any event, the burden of demonstrating the invalidity of a legislative enactment rests with the party attacking its constitutionality. *Salisbury Beauty Schools v. State Board of Cosmetologists*, 268 Md. 32, 48, 300 A.2d 367 (1973).

A.

The circuit court found that Bill No. 156-87 was an improper exercise of the police power for essentially two reasons.

1.

The circuit court determined that the provisions of the Bill relating to the posting of signs and the exception prohibiting generally the towing of vehicles with valid handicapped identifications were too stringent and interferred with the rights of private property owners to remove trespassing vehicles from their property. Initially, we shall reject appellee's contention that appellants do not have standing to assert that the rights of private property owners are improperly infringed by the ordinance. It is true that this issue was not raised below. *See Supra*, n. 3. As we see it, however, the circuit court was not precluded from granting declaratory relief on grounds entirely different from those on which relief was sought. *See Mayor and Town Council of New Market v. Armstrong*, 42 Md. App. 227, 233, 400 A.2d 425 (1979). And, appellee cites no authority for the proposition that the circuit court improperly decided the issue.

Moreover, we think it appropriate on appeal to address the issue, as it was expressly decided by the circuit court. Md. Rule 9-131(a).

Having crossed that hurdle, we need only briefly consider appellee's contention on cross-appeal that the Bill does not improperly interfere with the rights of private property owners. There is no evidence whatsoever in the record before us that the provisions of the Bill requiring signs to be posted and prohibiting generally the towing of vehicles with valid handicapped identification are unduly restrictive of the rights of private property owners. In fact, not one private property owner participated in this litigation. Consequently, in view of the strong presumption as to the validity of the Bill, we hold that there is insufficient evidence to sustain, on these grounds, the circuit court's conclusion to the contrary. *Salisbury Beauty Schools, supra*, 268 Md. at 48.

2.

Bill No. 16-87 does not expressly create a possessory lien in favor of the towing company. In other words, the Bill does not give a towing company the right to retain a motor vehicle until the vehicle owner pays the towing and storage fees. 30C-8(c)(8). From that, the circuit court concluded that "since no possessory lien exists, there was no statutory or common law requirement that the owner has to pay the tow truck operation...the trespassing vehicle owner isn't required to pay anything for the return of his vehicle and is entitled to have it returned upon demand."

Appellants contend that, under the circumstances, a common law possessory lien is created in favor of the towing company until the vehicle owner pays the towing and storage fees. However that may be, appellants repeatedly conceded at the hearing in the circuit court that the Bill created no possessory lien by virtue of the trespassing

vehicles having been towed and stored. Consequently, whether the circuit court properly decided that no possessory lien was created by Bill No. 16-87 has not been preserved for review. *Pitts v. Mahan*, 39 Md. App. 95, 96-97, 382 A.2d 1092 (1978) (whether trial court erred in finding plaintiff guilty of contributory negligence as a matter of law not preserved for review where plaintiff's counsel conceded at trial that plaintiff was contributorially negligent).

Beyond that, the parties agree on appeal that a vehicle owner who parks without permission on private property that is properly posted with signs warning that trespassing vehicles will be towed, and whose vehicle is towed at the direction of the property owner, is liable to the towing company for towing and storage fees. We agree and hold that, under these circumstances, there is an obligation to pay.

A promise to pay may be manifested by conduct or by implication from surrounding circumstances. Restatement (Second) of Contracts §4 Comment a (1981). See also 1 Corbin, Contracts §§ 18-19 (1963). As we see it, the obligation to pay arises because a vehicle owner, who parks in an area where signs prohibit the parking of unauthorized vehicles and such signs indicate that vehicles will be towed at the expense of the vehicle's owner, impliedly agrees to pay reasonable towing and storage charges. See 73 Op. Atty. Gen. ____ (1988) [Opinion No. 88-055 (December 19, 1988)]. In *Capson v. Superior Court of Maricopa*, 139 Ariz. 113, 677 P.2d 276 (1984), a towing company was charged with theft after it failed to return to the owner a vehicle which had been involuntarily towed. While the Court found that no possessory lien existed, it indicated that there may be an implied agreement by the vehicle owner to pay for towing where the signs posted on the parking lot specified that a \$75 towing fee would be assessed if the vehicle was towed. *Id.* at 278. Under Bill No. 16-87, posted

signs must indicate, among other things, that any vehicles that are parked in violation of the restrictions may be towed at the expense of the vehicle owner. 30C-4(b)(3)(B). We hold that the provisions of Bill No. 16-87 regulating the posting of signs are sufficient to place vehicle owners on notice that if they park in designated no parking areas they are liable for reasonable towing and storage fees.⁶

Our holding is not inconsistent with Md. Transp. Code Ann. § 26-301(b)(3) (1987 & Supp. 1989), which empowers political subdivisions generally to regulate the towing of vehicles from privately owned parking lots. Moreover, statutes in other jurisdictions expressly provide that a vehicle owner who without authorization parks on private property in defiance of posted parking restrictions shall be deemed to have consented to the removal and storage of his vehicle as well as to payment of charges for its removal and storage. See Ill. Rev. Stat. Ch. 82, para. 47(a) (1989); Ohio Rev. Code Ann. § 4513.60 (Baldwin 1989).

The actions of a municipality in the exercise of its police power will ordinarily not be interfered with unless they are arbitrary or patently unreasonable. *Salisbury Beauty Schools, supra*, 268 Md. at 48. In *Crane Towing, Inc. v. Gorton*, 89 Wash. 2d 161, 570 P.2d 428 (1977) the Supreme Court of Washington upheld as a proper exercise of the State's police power a statute that is markedly similar to Bill No. 16-87. Like Bill 16-87, the statute in *Crane* requires private property owners to post signs that contain warnings that unauthorized vehicles will be towed as well as information to assist vehicle owners in recovering their vehicles. 570 P.2d at 430. In *Crane*, the statute also imposes restrictions

⁶The obligation to pay may also arise by statute or ordinance. See *T.R. Ltd. v. Lee*, 55 Md. App. 629, 465 A.2d 1186 (1983), cert. denied, 470 A.2d 353 (1984). We express no opinion as to whether Bill No. 16-87, read in its entirety, imposes such liability.

on the towing companies. For instance, towing companies are required to be available on a 24-hour basis to facilitate vehicle recovery, and must give notice of each towing to local law enforcement agencies. *Id.* at 431. And, not unlike Bill No. 16-87, towing companies are required to accept as payment for towing and storage fees either cash, personal checks drawn on local banks, or valid and appropriate credit cards. *Id.* at 432, n.6. The statute also provides for damages twice the amount of towing and storage fees in the event that the vehicle owner later attempts to defraud the towing company. *Id.* We find persuasive the Court's reasoning in *Crane* as to why the legislation was a valid exercise of the State's general police power:

Modern society's dependence on the automobile as the primary mode of travel is well known in this time of national discussion on energy conservation. Traveling hundreds of miles from one's home and back in one day, whether for business or pleasure, is surely not an uncommon experience. It cannot be doubted that the unexpected loss of the use of one's vehicle directly affects the safety and welfare of vehicle operators and owners. A person may be stranded hundreds of miles from home with no alternative mode of return travel and with no place to stay until the vehicle can be recovered. Similarly, the loss of the use of one's vehicle may substantially affect one's employment. Legislation which tends to assist members of the public from involuntarily losing the use of their vehicles and which tends to expedite recovery of their vehicles once they have been removed fairly and clearly promotes the safety and welfare of the public.

Id. at 433-434. Accordingly, we hold that bill No. 16-87 bears a reasonable and substantial relation to the safety and

welfare of the people and to the goals of the Montgomery County Council.

B.

That the enactment of Bill No. 16-87 is a proper exercise by the county of the police power does not conclude our inquiry, however, Appellants contend that the Bill, by requiring towing companies to accept as payment for towing and storage charges personal checks or credit cards in lieu of cash, violates Article I, § 10 of the United States Constitution:

No State shall ... make anything but gold and silver coin a tender in payment of debts....

We see it somewhat differently.

Section 30C-8(c), entitled "Payment and Promise to Pay," requires a towing company to accept as full payment of towing and storage charges either a credit card or a personal check. 30C-8(c)(2)(A). That section does not create a new form of legal tender nor regulate its value. Nor does it deprive the towing company of its right to collect its debt in money. In *Porter v. City of Atlanta*, 259 Ga. 526, 384 S.E.2d 631 (1989), cert. denied, 110 S.Ct. 1297 (1990), the Supreme Court of Georgia considered whether a municipal ordinance requiring wrecker companies to accept checks and credit cards attempts to legislate a change in legal tender. In rejecting the argument, the Court said,

[t]he regulation does not require appellees to accept something other than legal tender to discharge a debt. The debt is discharged when the appellants receive payment in legal tender through a third party institution.

384 S.E.2d at 634. We hold that the circuit court's determination that the provision at issue represents merely an alternative manner of "cash" payment, rather than establishing a

substitute form of legal tender, was correct.

Furthermore, the provisions requiring a towing company to accept checks or credit cards has a reasonable relation to facilitating the recovery of vehicles by their owners. Moreover, in the absence of a possessory lien to secure payment of towing and storage charges, those provisions are obviously favorable to the towing companies. In any event, a towing company that has been defrauded may find solace in the provisions protecting towing companies against an owner who later withdraws payment. See 30C-8(c)(5) and (6).

Appellant's reliance on *Capital Grain & Feed Co. v. Federal Reserve Bank of Atlanta*, 3 F.2d 614 (N.D. Ga. 1925) is misplaced. That case held unconstitutional a state law permitting banks to pay its checks by another check. This was, according to the Court, a plain effort to make a debt dischargeable by something other than gold or silver coin or other medium fixed by constitutional federal authority. *Id.* at 616. Yet, the Court said that the case would have been different had the statute made the check to be given by the bank in payment of a debt only tentative and to be payment when itself was paid by lawful money. *Id.* This latter circumstance is not unlike the present case. Here, the tender of personal checks or credit cards are characterized as promises to pay. See 30C-8(c).

In sum, we hold that the circuit court erred in holding that Bill No. 16-87 was an unconstitutional exercise of the police power by Montgomery County.

JUDGMENT REVERSED.
COSTS TO BE PAID
THE APPELLANTS.

8

Id

APPENDIX D

GLEN CADE
t/a G & G TOWING,
et. al.

In the
Court of Appeals
of Maryland

v.

Petition Docket No. 332

MONTGOMERY COUNTY, September Term, 1990
et. al

(No. 1161, September Term, 1989
Court of Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari and motion for injunction to the Court of Special Appeals and the answer filed thereto, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition and motion for injunction be, and they are hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert C. Murphy

Chief Judge

Date: August 30, 1990

JAN 7 1991

FRED F. SPANOL, JR.
CLERK

No. 90-897

IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

GLEN CADE t/a G & G TOWING, *et al.*,
Petitioners,
v.

MONTGOMERY COUNTY, MARYLAND, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the
Court of Special Appeals of Maryland

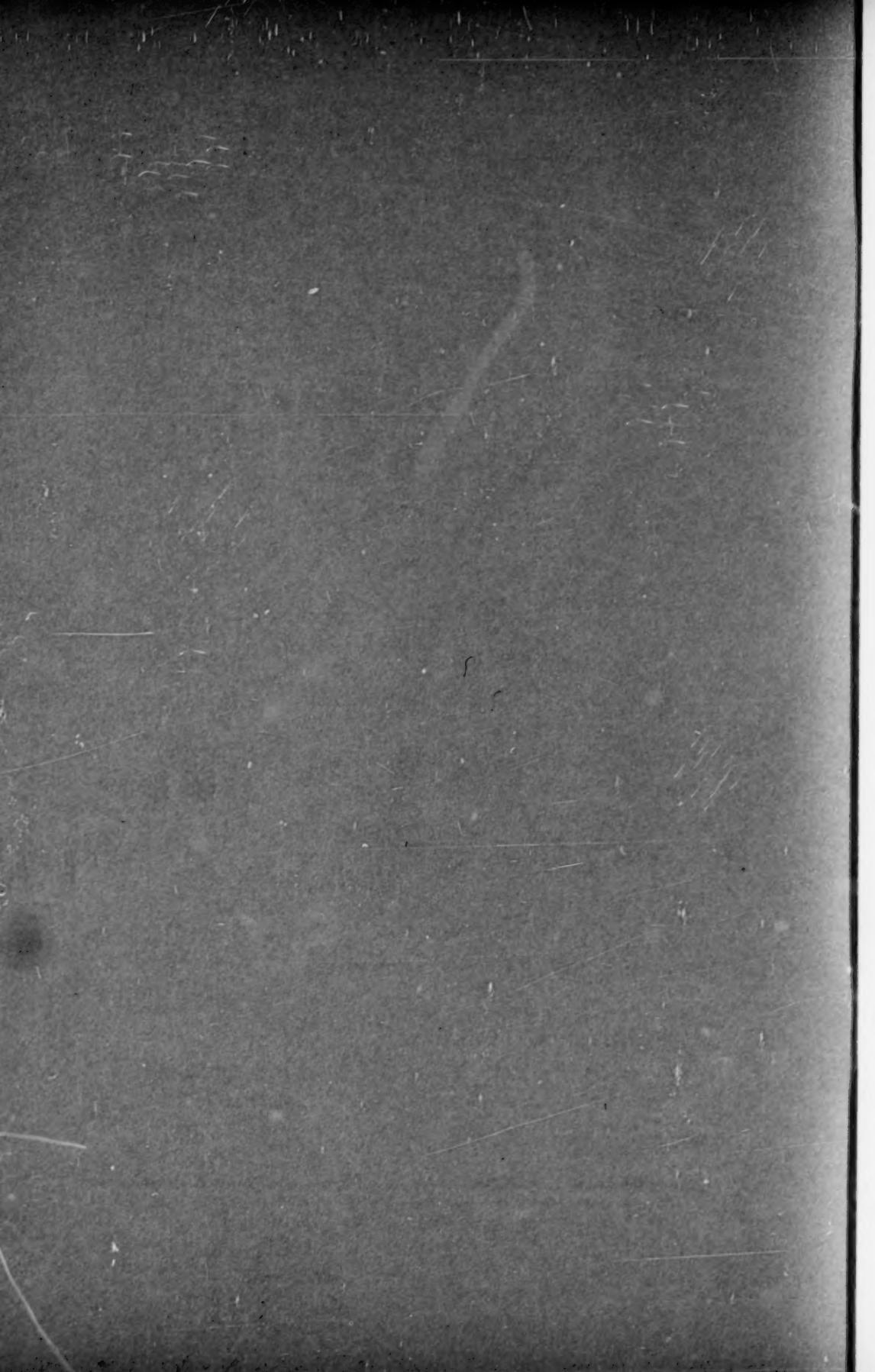
BRIEF IN OPPOSITION

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January 7, 1991

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QUESTION PRESENTED

DOES A LOCAL ORDINANCE REQUIRING A TOWING SERVICE TO ACCEPT CHECKS AND CREDIT CARDS, IN LIEU OF CASH, FOR PAYMENT OF ALL FEES RESULTING FROM TOWING AND STORAGE OF A TRESPASSING VEHICLE FROM PRIVATE PROPERTY COMPLY WITH THE LEGAL TENDER CLAUSE OF THE UNITED STATES CONSTITUTION?

(i)

PARTIES TO THE PROCEEDING

This statement serves to correct an inaccuracy in Petitioner's Petition for Writ of Certiorari with regard to the parties. The Respondents are Montgomery County, Maryland, and former Montgomery County Executive Sidney Kramer. The current County Executive for Montgomery County, Maryland, is Neal Potter, who was sworn into office on December 3, 1990.

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

No. 90-897

GLEN CADE t/a G & G TOWING, *et al.*,
Petitioners,

v.

MONTGOMERY COUNTY, MARYLAND, *et al.*,
Respondents.

**On Petition for a Writ of Certiorari to the
Court of Special Appeals of Maryland**

BRIEF IN OPPOSITION

STATEMENT OF THE CASE

Montgomery County has adopted a home rule charter under Article X1-A of the Maryland Constitution. Consequently, Article 25A, Section 5(s) of the Annotated Code of Maryland (1990 Repl. Vol.) confers upon Montgomery County the authority to "pass all ordinances, resolutions, or bylaws . . . as may be proper in executing and enforcing any powers enumerated in this section and elsewhere in this Article, as well as such ordinances as may be deemed expedient in maintaining peace, good government, health and welfare of the County."

On February 16, 1988, the Montgomery County Council passed Bill 16-87, which was to take effect on May 26, 1988. The Bill, which is codified in Chapter 30C of the Montgomery County Code, regulates and controls the towing of trespassing motor vehicles from private property without the consent of the vehicle owner, otherwise known as "trespass tows." The Bill was established, in part, as an attempt to address abuses in the towing industry such as the difficulty of vehicle owners in redeeming their towed vehicles. (App. 4c-6c) Significant to the issue which Petitioners' desire to have this Court review, the Bill in Section 30C-8(c) provides, in part, that a towing company must accept, instead of cash, either a credit card slip or a personal check. Sections 30C-8(c) (5) and (6) provide for liquidated damages in the event that a vehicle owner withholds payment on a credit card or stops payment of a check given to the towing company to pay for trespass tows. (App. 6c)

Petitioners, who are engaged in the business of trespass towing of vehicles from private property at the request of private property owners, filed a Complaint for Interlocutory and Permanent Injunction and Declaratory Relief on April 22, 1988, in the Circuit Court for Montgomery County, Maryland, challenging the Bill as unconstitutional. (App. 1a-7a) On May 18, 1988, the Court issued an Interlocutory Injunction enjoining enforcement of the Bill pending a final disposition on the merits, which interlocutory injunction order was subsequently modified to permit Montgomery County to enforce certain sections of the Bill pending final disposition of the case. (App. 3c [n.2])

Thereafter, the parties filed cross-motions for summary judgment. Petitioners argued that the Bill's requirement that checks and credit cards be accepted by towing companies, in lieu of cash, for trespass tows violated the Legal Tender Clause of the United States Constitution. (U.S. Constitution, Art. 1, § 10) Petitioners

argued that Montgomery County was attempting to create a new form of legal tender. Respondents asserted that the Bill did not violate the Legal Tender Clause of the States Constitution because the County was not attempting to coin money or make anything but gold and silver tender in payment of a debt.

On June 16, 1989, the Circuit Court entered an Opinion and Order holding that the Bill did not violate the Legal Tender Clause because Montgomery County was not creating a cash substitute. (App. 3b) However, the Court held that the Bill exceeded the police powers of Montgomery County, Maryland, and thus was unconstitutional in its entirety. (App. 1a-8b)

Petitioners then filed an appeal to the Court of Special Appeals of Maryland challenging the Circuit Court's decision on the legal tender issue and noting other objections. Respondents filed a cross-appeal on the issue concerning the police powers of Montgomery County. The Court of Special Appeals issued a reported decision dated June 27, 1990, reversing the Circuit Court's decision and finding the Bill constitutional in its entirety. (App. 1c-13c) The Court of Special Appeals ruled, among other things, that the checks and credit card requirement did not violate the Legal Tender Clause of the United States Constitution. The Court issued its mandate dated July 27, 1990.

Petitioners filed a Petition for Writ of Certiorari to the Court of Appeals of Maryland on July 31, 1990, which was denied by Order dated August 30, 1990. (App. 1d) Petitioners filed their Petition for Writ of Certiorari to the Supreme Court on November 28, 1990, and seek to have this Court review the decision of the Court of Special Appeals of Maryland upholding the check and credit card requirement of Bill 16-87.

SUMMARY OF ARGUMENT

1. The Court of Special Appeals of Maryland did not rely on a balancing test to determine the constitutionality of the check and credit card requirement under the Legal Tender Clause.
2. The Court of Special Appeals simply found that the check and credit card requirement does not violate the Legal Tender Clause because it does not require towing companies to accept something other than legal tender to discharge a debt.
3. The balancing test used by the Court of Special Appeals of Maryland was applied to the issue of reasonableness of the regulation in confirming that the check and credit card requirement was within the police powers of Montgomery County, Maryland.
4. Petitioners' example relating to the 7-11 convenience store is flawed and implies that Petitioner's misunderstand the purpose of the check and credit card requirement.
5. In the case of *Porter v. City of Atlanta*, 259 Ga. 526, 384 S.E.2d 631 (1989), the Supreme Court of the United States denied certiorari on February 26, 1990. Thus, this Court has already failed to see the need to review the check and credit card requirement.
6. There is no need for this Court to review this matter since all three State appellate courts (Maryland, Georgia, and Washington), as referred to by Petitioners, are in agreement with the constitutionality of the check and credit card requirement. Therefore, the Petition for Writ of Certiorari should be denied.

ARGUMENT

The Maryland Court of Special Appeals ruled that the requirement in Montgomery County Council Bill No. 16-87 that towing companies accept as payment for towing and storage charges personal checks or credit cards, in lieu of cash, did not violate the Legal Tender Clause of the United States Constitution. (Art. I, § 10, Clause 1, of the U.S. Constitution) The Court of Special Appeals found that the lower court correctly determined that "the provision at issue represents merely an alternative manner of 'cash' payment, rather than establishing a substitute form of legal tender . . ." *Glen Cade t/a G&G Towing v. Montgomery County, Maryland* (No. 1161, September Term, 1989, filed June 27, 1990) p. 13. (App. 12c, 13c)

Petitioners seek to challenge the payment provision contained in Section 30C-8(c)(2)(A) of Bill No. 16-87, entitled "Payment and Promise to Pay," as violative of the Legal Tender Clause. Petitioners claim the Bill requires them to accept something other than cash for payment of the towing debt. In their Petition for Writ of Certiorari ("Petition"), Petitioners allege as the basis for their Petition that the Court of Special Appeals of Maryland and the state appellate courts in Washington and Georgia "seem[ed] to rely on a balancing test between the needs of the government to regulate the towing industry and the requirement of Article 1, § 10, of the United States Constitution." (Petition at p. 6) Petitioners seek this Court's review because they claim it is not clear from a constitutional perspective whether a governmental entity can require a private party to accept a check or credit card for what Petitioners believe is a "purely private transaction."

Petitioners are incorrect in their assessment of the Court of Special Appeals' decision with regard to the use of the balancing test. The Court of Special Appeals, in determining whether the check and credit card require-

ment violated the Legal Tender Clause, did not engage in a balancing test. The Court specifically found that Section 30C-8(c) did not create a new form of legal tender nor did it regulate the value of legal tender. The Court relied on the decision of the Supreme Court of Georgia in *Porter v. City of Atlanta*, 259 Ga. 526, 384 S.E.2d 631 (1989), cert. denied, ____ U.S. ___, 110 S.Ct. 1297, 108 L.Ed.2d 474 (1990), which ruled that an ordinance requiring checks and credit cards does not require towing companies to accept something other than legal tender to discharge a debt. The Court held that the debt is discharged upon receipt of cash through a third-party institution. *Id.*, 384 S.E.2d at 634. This determination is quite straightforward and certainly does not require a much more detailed review by this Court.

Although the Court of Special Appeals did not conduct a balancing test of the need for governmental regulation against the constitutional requirement of legal tender, it did state that the requirement of checks and credit cards has a reasonable relation to the vehicle owners' ability to facilitate recovery of their vehicles. *Cade*, at p. 14. (App. 13c) The Court, using a balancing test to determine whether Bill No. 16-87 was a reasonable exercise of police power, confirmed that such a requirement was within the police powers of Montgomery County in that it was reasonably related to the safety and welfare of the people. This balancing test had no bearing on the Court's finding that the check and credit card requirement was constitutional and not violative of the Legal Tender Clause. The balancing test was used to determine the reasonableness of the provision, which was another issue the Court addressed. As such, Petitioners' reasoning for seeking review by this Court is unfounded.

Petitioners seek to provide the Court with an example of the type of regulation sought to be imposed by referring to local convenience stores. Petitioners question whether a local municipality can require a local 7-11 or other convenience store to accept a check or credit card

as payment for a quart of milk. In other words, can governmental regulation of private business extend to forms and methods of payment? Petitioners' question implies that they do not understand the purpose of the Bill as it relates to the check and credit card requirement. The situation that exists between the 7-11 store and the individual who wants to purchase the milk is a consensual arrangement. More importantly, the milk belongs to the 7-11 store until the consumer actually purchases the milk by paying the sum requested by the 7-11 owner. In the instant case, the facts are quite different. The debt between the towing companies and the vehicle owners has already been created and is not a consensual arrangement. Furthermore, the vehicle does not belong to the tower but rather to the vehicle owner. The County does not have a substantial need to require a 7-11 store owner to accept checks and credit cards as it does in the towing companies' case.

The real focus of Petitioners' question concerns the reasonableness of the regulation—Is regulating the method of payment, i.e., check, credit card and cash, reasonably related to the safety and welfare of the citizens. The Court of Special Appeals clearly recognized that Bill No. 16-87, including the payment provision requiring checks and credit cards to be accepted by the towing companies in lieu of cash, is a valid exercise of the government in the exercise of its police power. The Court relied on the case of *Crane Towing, Inc. v. Gorton*, 89 Wash.2d 161, 570 P.2d 428 (1977) which clearly upheld as a proper exercise of police power a statute markedly similar to Bill No. 16-87.

In *Crane*, the Supreme Court of Washington recognized that the cash requirement was a way for towing companies to ensure collection of their fees, which arose out of an involuntary arrangement between the towing company and the vehicle owner, but noted that the involuntarily-created relationship placed significant bur-

dens on the vehicle owner or driver. *Id.*, 570 P.2d at 436. The Court noted that there are “[m]any times which he may not have the cash available to retrieve his vehicle, especially in this day and age when individuals rely to a great extent on credit card or acceptance of their personal checks for their day-to-day commercial transactions.” *Id.*, 570 P.2d at 436-437. Finally, the Court recognized that it may be difficult for the consumer to obtain the necessary cash if the vehicle is removed after business hours or if the vehicle is removed on a Friday night and the consumer must wait until the banks open on Monday to obtain the cash. *Id.*, 570 P.2d at 437.

The Court of Special Appeals found persuasive the *Crane* Court’s reasoning that legislation which tends to assist members of the public from involuntarily being separated from their vehicle and which tends to expedite recovery of their vehicles once they have been removed fairly and clearly promotes the safety and welfare of the public. It is here that the Court utilized a balancing test to determine if the Bill bore a reasonable relation to an important governmental interest and correctly concluded that it did.

Finally, Petitioners argue that the situation created by Bill No. 16-87 in Montgomery County is not unique but has been raised by two other state courts in *Porter* and *Crane*. In *Porter*, the Supreme Court of Washington, as discussed above, specifically found that the check and credit card requirement did not violate the U.S. Constitution. When the towing companies filed a Petition for Writ of Certiorari to the Supreme Court, the Court denied the petition. Further, the *Crane* case recognized the reasonableness of the check and credit card requirement, but did not address the legal tender issue. These two state appellate courts, as well as the Maryland Court of Special Appeals, have agreed that the checks and credit card requirement is constitutional. It is noteworthy that the Maryland Court of Appeals denied certiorari in this case. There is no conflict on the constitu-

tional issues between these state courts nor is there any conflict between these state court decisions and any decision by this Court. See Rule 10.1 of the Federal Rules of the Supreme Court of the United States. Thus, there is no need for this Court to grant the Petition for Writ of Certiorari.

CONCLUSION

WHEREFORE, based on the foregoing, Respondents submit that there are no important and special reasons for the Supreme Court to review the issue presented herein and respectfully request that the Court deny Petitioners' Petition for Writ of Certiorari in this case.

Respectfully submitted,

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